

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

AMERICAN SOCIETY OF
HOME INSPECTORS, INC.,

Plaintiff,

V.

INTERNATIONAL ASSOCIATION OF
CERTIFIED HOME INSPECTORS, and
NICKIFOR GROMICKO a/k/a
NICK GROMICKO,

Defendants.

No.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, American Society of Home Inspectors, Inc. (“ASHI”), for its Complaint against defendants International Association of Certified Home Inspectors (“InterNACHI”) and Nickifor Gromicko a/k/a Nick Gromicko (“Gromicko”), alleges as follows:

NATURE OF THE ACTION

1. This is an action by ASHI against InterNACHI and its founder and current Chairman, Gromicko, for tortious interference with contract, tortious interference with business expectancy, defamation, and false light invasion of privacy. ASHI and InterNACHI are both national associations of home inspectors and, as such, are direct competitors for members, among other things. Gromicko and InterNACHI have made no secret of the fact that they will do whatever it takes to eliminate competition. For example, Gromicko has stated in public forums that his “stated goal is to live in a world where every inspection is performed by an InterNACHI member” and that he “[doesn’t] want any non-members to do any inspections on anything, anywhere ever.” In order to further his goals, Gromicko has recently published false and

defamatory statements about ASHI stating that it has settled a lawsuit with a company that has threatened home inspectors thereby providing that company funds and resources to further threaten home inspectors. These false and defamatory statements have impacted ASHI's membership and caused it financial injury. As a result, ASHI seeks compensatory and punitive damages against InterNACHI and individually against its agent, Gromicko.

PARTIES

2. ASHI is a New York non-profit corporation with its principal place of business located in Des Plaines, Illinois. ASHI is a citizen of the States of New York and Illinois. ASHI is a national 501(c)(6) non-profit professional association of home inspectors.

3. Defendant InterNACHI is a Colorado corporation with a principal place of business located in Boulder, Colorado. InterNACHI is a citizen of the State of Colorado. InterNACHI is a national association of home inspectors. Although it represents itself as a non-profit corporation, on information and belief, InterNACHI pays its Chairman, Gromicko, a salary of over \$300,000 a year.

4. Defendant Gromicko is an individual. Gromicko resides in and is a citizen of the State of Colorado. Gromicko is the founder and current Chairman of InterNACHI.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1) as this is an action between citizens of different states wherein the amount in controversy exceeds the sum or value of \$75,000 exclusive of interest and costs. This Court has personal jurisdiction over the defendants due to defendants' systematic and continuous business connections and contacts with Illinois.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a)(2) in that a substantial part of the events or omissions giving rise to this claim occurred in this judicial district.

FACTUAL BACKGROUND

7. ASHI is a national non-profit association of home inspectors with over 6,000 members. ASHI was the first association of its kind in the industry, and is recognized as the most influential and respected association in the home inspection industry.

8. In order to become an Associate Member of ASHI, an inspector must pass an on-line Standard of Practice/Code of Ethics examination from the ASHI Learning Center. To renew, an Associate Member (and all other membership categories) must each year complete at least 20 hours of acceptable continuing education. To move up to an Inspector Member, a member must have performed at least 75 fee paid inspections, had a sample of their inspection reports verified as being in compliance with the ASHI Standards of Practice, and passed the “National Home Inspector’s Examination”, a technical examination independently developed and administered by the Examination Board of Professional Home Inspectors (EBPHS). The NHIE is the same examination used by many state governments for the licensing of home inspectors and has undergone a rigorous approval process. To move up to and become a Certified ASHI Member, an inspector must have performed at least 250 fee paid home inspections. (In addition to having previously had a sample of their inspection reports verified as compliant with the ASHI Standards of Practice and passed the NHIE). ASHI is the only association of home inspectors in North America whose certification program is formally submitted to, and accredited by, an independent third party organization (The National Commission for Certifying Agencies).

9. InterNACHI is also a national association of home inspectors with an unknown number of members across the country, including Illinois. InterNACHI was founded by Gromicko. InterNACHI competes with ASHI for members throughout the United States and Canada.

HomeSafe Inspection, Inc.

10. In about March 2003 a company known as HomeSafe Inspection, Inc. (“HomeSafe”) was founded in Oxford, Mississippi. Since 2008, HomeSafe has purportedly been engaged in the business of licensing certain infrared technologies and procedures utilized in the inspection of homes for termites and other potential defects or problems. HomeSafe’s licensing agreements are purportedly based on United States patents which HomeSafe obtained for its infrared technology beginning in about 2008 (the “HomeSafe Patents”).

11. InterNACHI is one of HomeSafe’s licensees according to an agreement filed of record in a lawsuit brought by HomeSafe against InterNACHI. Pursuant to its license with HomeSafe, InterNACHI members are purportedly entitled to utilize HomeSafe’s technology and methods in performing home inspection services.

12. On about January 14, 2015, HomeSafe filed a lawsuit in the Circuit Court of LaFayette County, Mississippi against InterNACHI alleging, among other things, that InterNACHI had breached its licensing agreement with HomeSafe, thereby depriving HomeSafe of revenues to which it was due.

13. HomeSafe has also brought an action against ASHI in the Circuit Court of Jefferson County, Alabama based on certain comments which ASHI and its former president, Bill J. Loden, have allegedly made with regard to the validity of the HomeSafe Patents.

Defendants' False Statements

14. While InterNACHI entered into an agreement which recognized the purported HomeSafe patents, ASHI, conversely, is vigorously defending itself against HomeSafe's claims and has not settled with HomeSafe or paid it any money.

15. In an effort to damage ASHI's reputation in the industry, and with its membership, InterNACHI and Gromicko have engaged in a campaign of spreading false and defamatory statements about ASHI regarding its involvement in, and response to, the HomeSafe lawsuit against ASHI. Examples of InterNACHI and Gromicko's false and defamatory statements include, but are not necessarily limited to, the following posts on InterNACHI's web forum (and possibly other locations as well):

a. Nick Gromicko post on July 22, 2015 at 7:20 p.m.:

"I kind of like it in the public forum. This plaintiff [HomeSafe] sued ASHI and ASHI's President. ASHI paid them to settle it. ASHI gave them a pile of money so that they can keep suing. They did."

b. Nick Gromicko post on July 22, 2015 at 7:38 p.m.:

"I think it's fine in the open [forum] section. The entire inspection industry should know which association (ASHI) folded like a wet paper bag and paid off the plaintiff and which association (InterNACHI) hired two law firms and has been battling them."

c. Nick Gromicko post on July 22, 2015 at 9:14 p.m.:

"Yes. We gave [HomeSafe] the entire list of InterNACHI members who are using their patented process including phone numbers, home addresses, and mother's maiden names. It was a blank sheet of paper. That's why they sued us with all of the money ASHI quickly gave them. I predict that even with ASHI's settlement money, they'll end up no better than all the other plaintiffs before them who committed financial suicide by suing InterNACHI."

16. In addition to the above, on December 14, 2014, Gromicko and InterNACHI further defamed ASHI in the Tampa Tribune in response to a favorable article published about

ASHI titled “Finding the Right Home Inspector Key in Spotting Future Headaches.” In response to the article Gromicko and InterNACHI submitted the following statements to the paper’s on-line comments section:

Nick Gromicko – Chairman at InterNACHI

ASHI is a known diploma mill that anyone can join online in 30 seconds or less with nothing more than a valid credit card.

ASHI’s highest membership designation is not much better. The “third party inspection test” they mentioned in the article is the NHIE, the very same minimum standard exam used by many states to license inspectors fresh out of school.

Homebuyers should look for the ASHI logo to avoid it.

17. InterNACHI and Gromicko have also slandered ASHI by falsely stating to others that “the ASHI president gave HomeSafe a bunch of money when he and his association were sued.” This false and slanderous statement was attributed to Gromicko and was posted at least twice by InterNACHI forum participants on July 24, 2015.

18. Gromicko and InterNACHI’s falsehoods are believed to be fact by many in the home inspection industry because of Gromicko’s position with InterNACHI. The statements are all the more outrageous given Gromicko’s hypocrisy as it was *Gromicko and InterNACHI* who caved in and through their written agreement settled the claims brought against InterNACHI by HomeSafe.

Gromicko and InterNACHI’s Long History of Trying to Harm Competitors

19. Gromicko and InterNACHI’s statements that ASHI had settled the claims brought against it by HomeSafe thereby providing HomeSafe with funds to pursue litigation against InterNACHI were knowingly false and made with actual malice in an attempt to directly harm ASHI’s business and reputation.

20. In fact, Gromicko and InterNACHI have a long history of trying to unlawfully harm InterNACHI's competitors and drive them out of business. Gromicko has not tried to hide this, and has even boasted about it on InterNACHI's public forum. The following are examples of Gromicko's posts on the InterNACHI forum (ASHI reserves its rights to produce others at the time of trial):

- a. Again, I'm not an industry advocate and never pretended to be. I wasn't born to be that. I'm an InterNACHI member advocate. Non-members steal food off of InterNACHI members' tables. My stated goal is to live in a world where every inspection is performed by an InterNACHI member. I'm being as open and honest as I can be: I don't want any non-members to do any inspections on anything, anywhere, ever.
- b. Jim, I don't want to "recruit" the husband/wife run mini association that has launched terrorist attacks at us at every turn...I want to destroy them. We're doing it little by little in the open market anyway (I doubt that they have 400 due-paying members left), but this patent thing could be our Enola Gay.
- c. As I've already explained Joe, I signed a confidentiality agreement with the patent owners. I'll say this though... this thing is a 3-headed, fire-breathing dragon, one that I have no intentions on trying to slay. In fact, I'm doing just the reverse. I'm trying to get a saddle on it. And if I succeed, I'm going to ride it right into the mini-association's village.
- d. Quote:

I would like to see Nick promise not to harm the home inspection industry by threatening or supporting any organization that threatens home inspectors who utilize infrared thermography infringement lawsuits based on the HomeSafe patents.

I can't make that promise. I have no duty to non-members. There are only so many inspections jobs. I view non-members as stealing food off the tables of InterNACHI members. I've done way more than I should for non-members already. I've provided non-members with a safe haven. What more do you want from me?

- e. We still have a lot of legal work to do as there are numerous parties involved. We're making sure we permanently protect InterNACHI members while at the same time trying not to deter lawsuits from being filed against NACHI members. Everything is going very well through. I couldn't be more pleased with how it is all turning out.

- f. But I admit, I have a long memory, so I'm still not done. This patent thing just might give me one more weapon to take some of their members' homes from them.

I am always astonished that plaintiffs fail to pull a case history on us before they file. If they simply spent a few hundred dollars doing that research they'd note that suing InterNACHI is nuts. Mark even went so far in a few cases, to ask the courts for something very tiny but absurd so that when he doesn't get it in the verdict, he can appeal... even when we've won. Yes, we've appealed verdicts that went our way just to financially punish the plaintiffs and drag the proceedings out longer.

I might be able to figure out how to keep the punishment coming with this patent thing. Give me a month. Staff is working on making a list of their members that use IR cameras.

Anyway, the husband/wife-run mini-group is essentially obliterated. I just couldn't (up until recently) find any other way to inflict any more harm on them and their members. As I said, this whole thing is really working out nicely for us. I couldn't be more pleased.

- g. Quote:

Have anyone considered that there may be some out there who are just making a living and may not even be aware of this org's existence.

No. If they are stealing inspection jobs from InterNACHI members and taking bread from the tables of members, Nick Gromicko is their enemy. I'd prefer that they simply stop doing inspections, voluntarily. Again, InterNACHI's position is that every inspection in the world should be performed by an InterNACHI member.

- h. Again, my position is that non-members should not only be offering IR services, they shouldn't be doing any types of inspections at all. ALL inspections in the world should be performed by InterNACHI members solely.

21. Gromicko and InterNACHI made the statements about ASHI knowing they were false, or with reckless disregard for their truth or falsity. Gromicko and InterNACHI made the statements for the purpose of causing inspectors to believe that ASHI had appeased HomeSafe and provided money to it thereby allowing HomeSafe to further threaten home inspectors. By

doing so, Gromicko and InterNACHI hoped to drive membership away from ASHI and to InterNACHI.

22. As a direct and proximate result of Gromicko and InterNACHI's actions, ASHI's reputation in the industry has been harmed, and it believes it has lost existing members and failed to obtain new ones.

23. As a direct and proximate result of Gromicko and InterNACHI's actions, ASHI has suffered, and will continue to suffer, damages in an amount to be determined, but which are not less than \$500,000.

COUNT I
(Tortions Interference with Contract)

24. ASHI realleges paragraphs 1 through 23 as if fully set forth herein.

25. Gromicko and InterNACHI were aware that ASHI had existing membership contracts with its members in direct competition with InterNACHI.

26. Gromicko and InterNACHI knew that their statements would discourage home inspectors from working with ASHI and would interfere with ASHI's existing contracts.

27. Gromicko and InterNACHI's actions were calculated to cause damage to ASHI's business, and to interfere with ASHI's contractual relationships with its members.

28. Gromicko and InterNACHI's statements that ASHI had settled claims brought by HomeSafe thereby providing HomeSafe with funds to pursue claims against inspectors utilizing infrared technology were knowingly false, made with actual malice and were made in an attempt to directly harm ASHI's business.

29. As a result of Gromicko and InterNACHI's actions, ASHI believes it has lost existing members, and failed to obtain new ones, because members believe that ASHI has assisted HomeSafe in pursuing claims against home inspectors.

30. As a direct and proximate of Gromicko and InterNACHI's false and misleading statements ASHI has been damaged in an amount to be proven at trial, but which is not less than \$500,000.

31. Gromicko and InterNACHI's actions were willful, wanton and egregious thereby warranting the imposition of punitive damages.

COUNT II
(Tortious Interference with Business Expectancy)

32. ASHI realleges paragraphs 1 through 31 as if fully set forth herein.

33. Gromicko and InterNACHI were aware that home inspectors were concerned about threats and claims being brought against them by HomeSafe for use of infrared technology in the home inspection process.

34. Gromicko and InterNACHI knew that their false statements would discourage home inspectors from becoming ASHI members.

35. ASHI had a reasonable expectancy of developing additional new members and further growing its membership. While ASHI has grown its membership, such growth would have been greater had it not been for defendants' interference.

36. As a direct and proximate result of Gromicko and InterNACHI's actions, ASHI has lost new members that it otherwise could reasonably have expected to develop.

37. As a direct and proximate result of Gromicko and InterNACHI's actions, ASHI has been damaged in an amount to be proven at trial, but which is not less than \$500,000.

38. Gromicko and InterNACHI's actions were willful, wanton and egregious thereby warranting the imposition of punitive damages.

COUNT III
(Defamation)

39. ASHI realleges paragraphs 1 through 38 as if fully set forth herein.

40. Gromicko and InterNACHI repeatedly communicated statements through InterNACHI's internet forum and elsewhere that ASHI had settled claims with HomeSafe thereby providing HomeSafe with funds to pursue claims against home inspectors.

41. Gromicko and InterNACHI's statements were knowingly false, or made with reckless disregard for their truth or falsity.

42. As a direct and proximate result of Gromicko and InterNACHI's false and defamatory statements, ASHI has suffered harm to its reputation.

43. As a result of Gromicko and InterNACHI's actions, ASHI has suffered damages in an amount to be proven at trial, but which are not less than \$500,000.

44. Gromicko and InterNACHI's actions were willful, wanton and egregious and therefore warrant the imposition of punitive damages.

COUNT IV
(False Light)

45. ASHI realleges paragraphs 1 through 44 as if fully set forth herein.

46. Gromicko and InterNACHI's statements that ASHI had acquiesced to HomeSafe, and settled claims brought against it by HomeSafe thereby providing HomeSafe with funds to pursue litigation against home inspectors, would be highly offensive to a reasonable person.

47. Gromicko and InterNACHI made the statements detailed herein knowing that they were false, or with reckless disregard to their truth or falsity.

48. Gromicko and InterNACHI's statements were made publicly on InterNACHI's internet forum.

49. As a result of Gromicko and InterNACHI's actions, ASHI has been placed in a false light.

50. As a result of Gromicko and InterNACHI's actions, ASHI has suffered damages in an amount to be proven at trial, but which are not less than \$500,000.

51. Gromicko and InterNACHI's actions were willful, wanton and egregious thereby warranting the imposition of punitive damages.

WHEREFORE, plaintiff ASHI prays for the following relief against defendants InterNACHI and Gromicko:

a. for compensatory damages in an amount to be proven at trial, but which are not less than \$500,000;

b. for punitive damages in an amount to be proven at trial, but which are not less than \$1,500,000;

c. for its attorney's fees and costs; and

d. for such further relief as the Court may deem appropriate.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE

Respectfully submitted,

AMERICAN SOCIETY OF HOME
INSPECTORS, INC.

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